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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Zhu	)	Art Unit: 2143
	)	
Serial No.: 09/840,328	)	Examiner: Lezak
	)	
Filed: April 23, 2001	)	50P4402.01
	)	
For: IP-BASED ARCHITECTURE FOR MOBILE	)	March 9, 2005
COMPUTING NETWORKS	)	750 B STREET, Suite 3120
	)	San Diego, CA 92101
	)	

APPEAL BRIEF

Commissioner of Patents and Trademarks  
Alexandria, VA 22313

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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**(1) Real Party in Interest**

The real party in interest is Sony Corp.

**(2) Related Appeals/Interferences**

No other appeals or interferences exist which relate to the present application or appeal.

**(3) Status of Claims**

Claims 1-30 are pending and finally rejected.

**(4) Status of Amendments**

No amendments are outstanding.

**(5) Concise Explanation of Subject Matter in Each Independent Claim, with Page and Figure Nos.**

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 recites an Internet packet (IP) mobile wireless communication system that includes a network operation center (NOC) (18, figure 1, page 5, line 10). The NOC in turn includes a home domain that has an associated home agent (24, figure 1, page 6, second paragraph). Plural base stations (14, figure 1, page 5, lines 9 and 10) communicating with the NOC. Each base station has a router (28, figure 1, page 7, second

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full paragraph) and a foreign domain having a foreign agent (30, id.). Plural client devices (12, figure 1, page 4, first sentence of Detailed Description) are in wireless IP communication with at least one base station. A base station detecting a client device uses its associated foreign agent to communicate an access request to the NOC, figure 2, page 8, second and third paragraphs. A client device is associated with an IP address, and the IP address is combined with an identification of the foreign agent of the foreign domain of a base station, figure 2, id. The access request includes the combined client device IP address/foreign agent identification, id.

The specification references above are incorporated into this paragraph. Claim 12 sets forth a mobile wireless IP-based communication network for providing up to the minute subscription services to client devices that includes a network operation center (NOC). Also, the network includes base stations communicating with the NOC and in wireless communication with client devices communicating with the network. The NOC provides subscription services to client devices via the base stations, and the base stations receive access authorizations from the NOC to permit client devices to communicate with the network. The base stations store accounting data based on client device usage of a base station (block 46, figure 2, page 9, first full paragraph).

The specification references above are incorporated into this paragraph. Claim 24 sets forth a method for providing subscription services to client devices via a wireless network. The method includes sending data to plural base stations, and transmitting the data in IP format to client devices that are in wireless communication with the base stations using a data transfer rate in excess of one megabyte per second (page 5, line 4).

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**(6) Grounds of Rejection to be Reviewed on Appeal**

Claims 1-30 have been rejected under 35 U.S.C. §103 as being unpatentable over Siu et al., USPN 6,522,641.

**(7) Argument**

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Appellant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, id., page 49979.

Claims 1-30 have been rejected under 35 U.S.C. §103 as being unpatentable over Siu et al., which nowhere in the relied-upon sections mentions a data rate, much less the data rate set forth in independent Claim 24, and which nowhere discloses in the relied-upon portions a foreign agent at a base station or anything that might be considered to be a foreign agent as set forth in independent Claim 1, much less one that combines the specific two entities now set forth in independent Claim 1. Indeed, while the Office Action alleges that the claimed foreign agent is disclosed in col. 1, lines 52-67, col. 2, lines 1-4, and col. 5, lines 37-53, it fails to explicitly state what, exactly, the examiner considers to be the foreign agent. In fact, the cited portions of cols. 1 and 2 simply teach that the base station connects to a network via ISDN switches, while the cited portion of col. 5 discusses various types of access. Nowhere in these sections does anything resembling a foreign agent appear, which may be why the rejection avoids specifically divulging just what

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is being considered to be the "foreign agent" in Siu et al. Furthermore, it does not appear that the base stations in Siu et al. have anything to do with accounting data as is otherwise set forth in independent Claim 12. The claims are patentable for these reasons alone.

Moreover, several missing elements from Siu et al. have been deemed obvious based on absolutely no evidence apart from "examiner findings". These, however, are not part of the prior art or general knowledge in the art. For example only, the examiner has "found it obvious" to include the subnet controller of Siu et al. with the network management center without a shred of prior art citation in support. As another example, the limitations of Claims 3 and 15 have been found to be unpatentable "over considerable consideration of the teachings of Siu".

The accurate arguments above have been met with an allegation that is puzzling, namely, that Appellant has not pointed out the patentable novelty of the claims. Plainly, the examiner has not read Appellant's arguments with any degree of meticulousness. The patentable novelty of Claim 24, which includes a particular data rate, has indeed been pointed to by Appellant - but not by the examiner, whose burden it is to identify it in the prior art if she wishes to make a legitimate *prima facie* case. Instead, the examiner points to something in Siu et al. (col. 5, lines 48-50) that is a *particular kind of network*, not a data rate, without identifying why she thinks a network is a data rate or where the prior art teaches that the relied-upon network has the claimed data rate.

The above-mentioned allegation is also puzzling in the context of the other claims, in that Appellant has indeed identified elements in the claims but the examiner has failed to identify them in the prior art. In essence, the examiner is accusing Appellant of the examiner's own failings. Consider, for example, that the foreign agent of Claim 1, explicitly mentioned in Appellant's arguments above, does not exist in Siu et al.

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The examiner attempts to air brush this shortfall away by alleging that the communication of Siu et al. "obviously reads upon the well-known use of client device IP address/foreign agent identification, as further noted within the references listed below but not relied upon". It does? Why? It evidently was not obvious to Mr. Siu, who did not have the insight to put it in his patent. If this is an inherency argument, it has not been demonstrated that Siu et al. *necessarily* requires the recited element, see MPEP §2112.

*Appropo* the comment about "other references not relied on", if they have not been relied on, they are not relevant to the rejection. Even if they are relied on to demonstrate the alleged well-known character of the missing element from Siu et al., that in and of itself is insufficient absent a *prior art* motivation to combine the missing element in the context of Siu et al. Instead of conforming to this legal requirement, however, the examiner merely concludes that "IP address/foreign agent identification is well known in the art", demonstrating a blissful lack of awareness of MPEP §2143.01 ("A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the invention was made...is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.")

With respect to the accounting data in the base stations of Claim 12, the examiner now shifts ground and maintains that the base stations "inherently" maintain accounting data. Unfortunately for the *prima facie* case, this allegation comes unaccompanied by a finding of fact based on evidence of record that base stations must *necessarily* store accounting data, MPEP §2112. Plainly, they can work just fine without storing any accounting data at all, because storing accounting data adds nothing to the communication functionality of a base station, so the lack of a showing of evidence to support the inherency allegation is rather glaring.

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Continuing the exposition of the legal errors with which the Office Action is rife, the examiner alleges that because "the claims are so broadly written, one interpretation would be to find the subnet controller in essence acts as a NOC". This is manifest error, because the principles of claim interpretation do not mutate depending on claim breadth. Rather, claims are to be construed as broadly as the skilled artisan would reasonably construe them, MPEP §2111.01, regardless of the examiner's opinion the scope of a claim. Applying the correct legal guidance to Claim 12, Claim 12 clearly requires a NOC *plus* plural base stations that communicate with the NOC. There is no evidence of record that the skilled artisan would regard a separately recited NOC to nonetheless be embodied by separately recited base stations. Stated differently, the examiner imputes a level of confusion to the skilled artisan for which there is absolutely no evidence.

Appellant notes for the record that the SPE signed the Office Action, indicating that he has already considered the gravamen of the arguments advanced herein and that he remained unpersuaded by them. Accordingly, having considered Appellant's previous arguments, which have been modified herein only to the extent necessary to address additional comments in the latest Office Action that the SPE signed, it would be most inappropriate to reopen prosecution in lieu of allowing the case to proceed to the Board. The only possible reason to reopen now is that insufficient supervisory attention heretofore has been paid to this examination; with only the specter of Board review precipitating that which should have been conducted earlier. Because Appellant is confident that the SPE has done his job, Appellant will expect either an Examiner's Answer or a Notice of Allowance in response to this brief.

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#### APPENDIX A - APPEALED CLAIMS

1. An Internet packet (IP) mobile wireless communication system, comprising:  
at least one network operation center (NOC) including at least one home domain having at least one associated home agent;  
plural base stations communicating with the NOC, each base station having at least one router and at least one foreign domain having at least one foreign agent; and  
plural client devices in wireless IP communication with at least one base station, whereby a base station detecting a client device uses its associated foreign agent to communicate at least one access request to the NOC, at least one client device being associated with at least one IP address, the IP address being combined with an identification of the foreign agent of the foreign domain of a base station, the access request including the combined client device IP address/foreign agent identification.
2. The system of Claim 1, wherein each client device is assigned an IP address and each base station stores accounting data related to network access of a client device through the base station.
3. The system of Claim 2, wherein the accounting data is sent to the NOC for correlation thereof to a client device registered at the NOC.
4. The system of Claim 1, wherein the NOC grants an access request when the client device associated with the request is registered at the NOC.
5. The system of Claim 1, wherein the NOC stores information relative to each client device registered at the NOC.
6. The system of Claim 4, wherein the NOC sends an acknowledgement of an access request to a base station to grant an access request from the base station.
7. The system of Claim 1, wherein mobile, up to the minute subscription services are provided to at least one client device by the NOC through at least one base station.
8. The system of Claim 1, wherein each router includes information to enable the router to recognize IP packets from foreign agents and home agents.
9. The system of Claim 1, wherein the home agent informs foreign agents of types of client devices communicating on the system.
10. The system of Claim 1, wherein a location of at least one client device is tracked and subscription services provided thereto based at least partially on the location.

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11. The system of Claim 1, wherein each client device includes a directional antenna and an IP transceiver electrically coupled to the antenna for communicating with the base stations.

12. A mobile wireless IP-based communication network for providing up to the minute subscription services to client devices, comprising:

at least one network operation center (NOC); and

plural base stations communicating with the NOC and in wireless communication with client devices communicating with the network, the NOC providing subscription services to client devices via the base stations, the base stations receiving access authorizations from the NOC to permit client devices to communicate with the network, the base stations storing at least some accounting data based on client device usage of a base station.

13. The network of Claim 12, wherein the NOC includes at least one home domain having at least one associated home agent and each base station has at least one router and at least one foreign domain having at least one foreign agent.

14. The network of Claim 13, wherein each client device is assigned an IP address and each base station stores accounting data related to network access of a client device through the base station.

15. The network of Claim 14, wherein the accounting data is sent to the NOC for correlation thereof to a client device registered at the NOC.

16. The network of Claim 13, wherein the NOC grants an access request when the client device associated with the request is registered at the NOC.

17. The network of Claim 13, wherein the NOC stores information relative to each client device registered at the NOC.

18. The network of Claim 16, wherein the NOC sends an acknowledgement of an access request to a base station to grant an access request from the base station.

19. The network of Claim 13, wherein each router includes information to enable the router to recognize IP packets from foreign agents and home agents.

20. The network of Claim 13, wherein the home agent informs foreign agents of types of client devices communicating on the network.

21. The network of Claim 13, wherein a location of at least one client device is tracked and subscription services provided thereto based at least partially on the location.

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22. The network of Claim 12, wherein the network has a data transmission rate between a client device and a base station in excess of one megabyte per second.

23. The system of Claim 1, wherein the system has a data transmission rate between a client device and a base station in excess of one megabyte per second.

24. A method for providing subscription services to client devices via a wireless network, comprising:  
sending data to plural base stations; and  
transmitting the data in IP format to at least one client device in wireless communication with at least one base station using a data transfer rate in excess of one megabyte per second.

25. The method of Claim 24, further comprising using a foreign agent at a base station to communicate with a home agent associated with a network operation center (NOC) to establish access to a wireless network such that the data can be received by a client device.

26. The method of Claim 25, further comprising combining an IP address of a client device with a name of a foreign agent to render a combination and sending the combination to the NOC.

27. The method of Claim 26, wherein the NOC uses the combination to determine whether to grant access to the associated client device.

28. The method of Claim 27, further comprising permitting a first client device to communicate with a second client device via at least one base station.

29. The method of Claim 24, further comprising storing at least some accounting data related to client device access at least one base station.

30. The method of Claim 24, further comprising tracking a location of at least one client device, and tailoring the subscription services in response thereto.

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**APPENDIX B - EVIDENCE**

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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**APPENDIX C - RELATED PROCEEDINGS**

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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